

IN THE IOWA DISTRICT COURT IN AND FOR MUSCATINE COUNTY

2005 JUL 17 PM 12:19

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL RESOURCES, (99AG23542),
COURT LAW NO. CVCV016788

Plaintiff,

vs.

GRAIN PROCESSING CORPORATION,

Defendant.

CONSENT ORDER, JUDGMENT
AND DECREE

NOW on this 17 day of July, 2006, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code section 455B.146. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.
2. Defendant Grain Processing Corporation ("Defendant") admits, for purposes of settlement and for this action only, the violations alleged in Paragraphs 50 and 51 of the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant is assessed a civil penalty of Five Hundred Thirty-eight Thousand and no/100 Dollars (\$538,000.00) for the violations alleged in the petition. The Defendant shall make this payment within thirty (30) days of the entry of this Consent Order, Judgment and Decree ("Order"). The Defendant shall also pay interest pursuant to Iowa Code section 535.3(1)

on any unpaid past due balance. Payments of the civil penalty and interest shall be made to the Clerk of the Iowa District Court for Muscatine County.

2. Defendant shall submit to the Iowa Department of Natural Resources ("IDNR"), within thirty (30) days of the entry of this Order, proposed PM₁₀ modeling protocols for conducting: (i) PM₁₀ National Ambient Air Quality Standards ("NAAQS") compliance analysis and (ii) PM₁₀ increment analysis. The proposed modeling protocols will be consistent with the Guideline on Air Quality Models in Appendix W of 40 C.F.R. Part 51, EPA's draft New Source Review Workshop Manual (October 1990), and the IDNR Air Dispersion Modeling Guidelines for PSD Projects (January 6, 2005), but air dispersion modeling shall be conducted using the AMS/EPA Regulatory Model, Version 04300. Specifically, these modeling protocols shall include:

- a. Sources located in the impact area and the screening area of Defendant's facility in Muscatine, Iowa ("Facility");
- b. For the NAAQS analysis protocol, all sources will be modeled at potential emission rates;
- c. For the increment analysis protocol, all sources will be modeled at their change in actual emission rate since the applicable baseline date or at current maximum allowable emission rates; and
- d. Fugitive emissions from emission sources at the Facility such as material handling, storage piles, and haul roads.

3. Defendant shall submit to the IDNR, within one hundred twenty (120) days of the last of the IDNR written approvals of the modeling protocols ("Protocol Date") referred to in paragraph 2, baseline modeling, prepared pursuant to the approved protocols, of: (a) PM₁₀ increment analysis of the Facility; and (b) PM₁₀ NAAQS of the Facility.

4. Defendant shall submit to the IDNR within five hundred and forty (540) days of the Protocol Date, a modeling analysis and report of compliance with the PM₁₀ increment levels and

PM₁₀ NAAQS. In the event the modeling analysis and report do not show compliance with either the PM₁₀ increment levels or PM₁₀ NAAQS, Defendant shall simultaneously submit to the IDNR a plan of compliance to achieve compliance with the PM₁₀ increment levels or PM₁₀ NAAQS, as the case may be ("Plan"). The Plan shall include but not be limited to the following information:

- a. A list of the emission units and points at the Facility that are being modified, physically or otherwise, to show compliance with the NAAQS and/or increment model(s);
- b. A description of the change(s) to each emission unit and point and including control equipment, stack parameters and PM₁₀ emission rate used in the model(s);
- c. Current permit numbers for the emission points and the emission unit and emission point ID numbers;
- d. A schedule for completing the changes for each of the emission points. The schedule shall identify, for a given project, all construction permits or permit modifications which are a prerequisite to its completion owing to their inter-relatedness for such reasons as proximity within the Facility, production processes, or construction considerations. The following construction permits or permit modifications shall not be considered prerequisites to another project:
 - (1) modifications which do not involve construction such as changes to emission limitations, or monitoring requirements; or
 - (2) modifications for construction of a stack or increased stack height, unless proximity within the Facility, production processes, or construction considerations require coordinated issuance of the permits in scheduling of construction.
- e. If any project is subject to the prevention of significant deterioration ("PSD") requirements pursuant to 567 Iowa Admin. Code 22.4 and 40 C.F.R. 52.21, a PSD evaluation with accompanying emission calculations and netting analysis.

5. Within one hundred and eighty (180) days of Defendant's receipt of the IDNR's written approval of the modeling analysis and the Plan, Defendant shall submit to the IDNR all necessary construction permit applications to implement the plan of compliance, except that the

Defendant shall have an additional ninety (90) days to submit construction permit applications for projects identified in the Plan as being subject to PSD.

6. Defendant shall complete construction required for each construction permit or permit modification required under the approved Plan within four (4) years of the date of issuance of such construction permit or permit modification unless the time deadline is extended in writing by the IDNR in its sole discretion. The IDNR shall simultaneously issue all construction permits and permit modifications required for a particular Project and its prerequisite permits identified in the approved Plan.

7. Defendant shall submit to IDNR written quarterly progress reports on its efforts to comply with the requirements of this Order, with the first quarterly report due within ninety (90) days of the entry of this Order.

8. Defendant shall pay to the Clerk of the Iowa District Court for Muscatine County the following stipulated civil penalties for violations of the compliance schedule contained in paragraphs two (2), three (3), four (4), five (5), and six (6) above:

a. \$1,000 per day for each violation of paragraphs two (2), three (3), and four (4) above;

b. \$1,000 per day for each construction permit application not timely submitted as required by paragraph five (5) above;

c. for each day of violation of the construction completion deadline contained in paragraph (6) above for each construction permit or permit modification:

(1) \$1,250 per day of each violation for the first thirty (30) days of violation,

(2) \$3,000 per day of each violation for the next sixty (60) days of violation,

(3) \$6,000 per day of each violation for the next sixty (60) days of violation,

(4) \$10,000 per day of each violation for each subsequent day of violation.

The IDNR may, in writing, waive any of the stipulated civil penalties referred to in paragraphs 8(a), 8(b), and 8(c).

Payment of these stipulated civil penalties shall be made no later than thirty (30) days after Defendant's receipt of a written demand from IDNR for payment, unless disputed by Defendant, or after a court order requiring such payment, whichever is later. Payment of these stipulated civil penalties shall not relieve the Defendant from any obligations established by this Order. Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources may at any time, in addition to collecting a particular stipulated civil penalty provided for herein or further injunctive relief, seek entry of contempt and appropriate sanctions for any willful failure to comply with the requirements of this Order.

9. Defendant is enjoined from violations of 567 Iowa Admin. Code 22.4; 40 C.F.R. section 52.21; and Air Quality Construction Permit Nos. 90-A-309 and 90-A-310, and as modified by the IDNR until the termination of this Order.

10. For purposes of implementation of this Order, all technical submittals, documents or correspondence shall be sent to the following:

Sarah Piziali
Environmental Engineer
Iowa Department of Natural Resources
7900 Hickman Road
Urbandale, IA 50322

Environmental Services Director
Grain Processing Corporation
1600 Oregon Street
Muscatine, IA 52761

All legal notices, documents or correspondence shall be sent to the following:

David R. Sheridan
Assistant Attorney General
Environmental Law Division
Lucas State Office Building
321 E. 12th Street, Room 018
Des Moines, IA 50319

Scott A. Young
Polsinelli, Shalton, Welte &
Suelthaus, P.C.
700 W. 47th Street, Suite 1000
Kansas City, MO 64112-1802

Anne Preziosi, Attorney
Iowa Department of Natural Resources
7900 Hickman Road
Urbandale, IA 50322

General Counsel
Grain Processing Corporation
1600 Oregon Street
Muscatine, IA 52761

A party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

11. The Court retains jurisdiction of this matter to insure compliance with the terms of this Order.

12. This Order shall terminate on the date that the IDNR, in writing, approves Defendant's request for termination of the Plan. The IDNR shall approve the request for termination when Defendant has fully complied with this Order and completed its undertakings in the approved Plan and completed all construction required in construction permits issued pursuant to the Plan.

13. The violations addressed in this Order shall not constitute a basis for delay or denial by the IDNR in the issuance or modification of any construction permit to Defendant which results in an increase in emissions pursuant to 567 Iowa Admin. Code § 22.3(1).


14. The costs of this action are taxed to the defendant in the amount of \$ 100 -
(Clerk to enter).

J. HOBART DARBYSHIRE

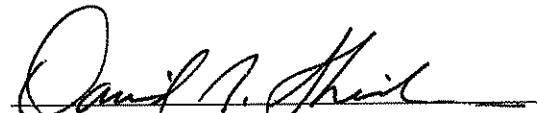
JUDGE, Seventh Judicial District of Iowa

Approved as to form:

IOWA DEPARTMENT OF
NATURAL RESOURCES

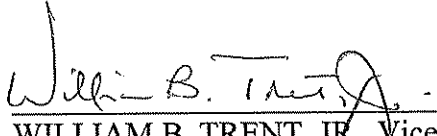

JEFFREY R. VONK, Director
Division Administrator for

THOMAS J. MILLER
Attorney General of Iowa

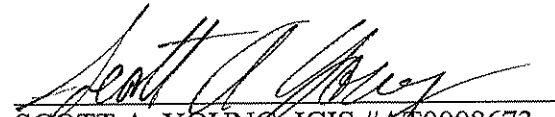

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